

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

BRUCE RUSH, as a participant in and on behalf of the Segerdahl Corporation employee stock ownership plan, and on behalf of a class of all others who are similarly situated,

Plaintiff,

v.

GREATBANC TRUST COMPANY; MARY LEE SCHNEIDER; RICHARD JOUTRAS; RODNEY GOLDSTEIN; PETER MASON; ROBERT CRONIN; JOHN DOE DEFENDANTS 1-10; and SEGERDAHL CORP. (d/b/a SG360),

Defendants.

Case No.: 1:19-cv-00738

Judge Andrea R. Wood
Magistrate Judge Susan E. Cox

JOINT PROPOSED FINAL PRETRIAL ORDER

Plaintiff Bruce Rush, as a participant in and on behalf of Segerdahl Corporation employee stock ownership plan and as a class representative of the Certified Class (“Plaintiff”) and Defendants Greatbanc Trust Company (“Greatbanc”), Mary Lee Schneider, Richard Joutras, Rodney Goldstein, Peter Mason, Robert Cronin, and the Segerdahl Corporation d/b/a SG360 (the “Segerdahl Defendants”) (collectively the “Defendants,” and together with “Plaintiff” the “Parties”), by and through their counsel undersigned, respectfully submit this Joint Proposed Final Pretrial Order pursuant to the Court’s Order dated November 15, 2022 (Dkt. 311). The submitted Pretrial Order is subject to revision once the Court issues its rulings on Defendants’ pending Motions for Summary Judgment and the Parties’ pending Daubert Motions.

1. Jurisdiction

The Court has federal question jurisdiction over Plaintiff's claims, which are brought under §§ 502(a)(2) and 502(a)(3) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), 29 U.S.C. §§ 1132(a)(2) and 1132(a)(3).

2. Trial Attorneys

Counsel for Plaintiff and the Class:

James A. Bloom
Todd M. Schneider (alternate)
SCHNEIDER WALLACE COTTRELL KONECKY LLP
2000 Powell Street, Ste. 1400
Emeryville, California 94608
Telephone: 415- 421-7100
jbloom@schneiderwallace.com
tschneider@schneiderwallace.com

Michael M. Mulder
Elena N. Liveris
LAW OFFICES OF MICHAEL M. MULDER
1603 Orrington Avenue, Suite 600
Evanston, Illinois 60201
Telephone: 312-263-0272
mmmulder@mmulderlaw.com
eliveris@mmulderlaw.com

Counsel for All Defendants:

Charles F. Seemann III
Robert W. Rachal
Katelyn Harrell
JACKSON LEWIS P.C.
601 Poydras St., Suite 1400
New Orleans, LA 70130
Telephone: 504-208-1755
Fax: 504-208-1759
CharlesSeemann@jacksonlewis.com
Robert.Rachal@jacksonlewis.com
Katelyn.Harrell@jacksonlewis.com

Sarah J. Gasperini
JACKSON LEWIS P.C.
150 N. Michigan Ave., Suite 2500
Chicago, IL 60601

Telephone: 312-803-2507
Fax: 312-787-4995
Sarah.Gasperini@jacksonlewis.com

Counsel for Defendants Cronin, Goldstein, and Mason:

William O’Neil
Kevin Simpson
Winston & Strawn, LLP
35 W. Wacker Dr.
Chicago, IL 60601
Telephone: 312-558-5308
kpsimpson@winston.com
woneil@winston.com

3. Case Statement

This case involves the marketing and sale of Segerdahl Corporation on December 7, 2016 to a consortium of investors led by ICV Partners. From January 1, 2003 to the time of sale, the Segerdahl Corporation Employee Stock Ownership Plan (the “ESOP”) was the sole owner of Segerdahl’s common stock.

On behalf of the certified Class of ESOP participants, Plaintiff Bruce Rush alleges that in relation to the marketing and sale of Segerdahl certain Defendants violated their fiduciary duties under ERISA § 404(a)(1), 29 U.S.C. § 1104(a)(1), engaged in transactions prohibited under ERISA § 406(a) & (b), 29 U.S.C. § 1106(a) & (b), breached their co-fiduciary duties under ERISA § 405, 29 U.S.C. § 1105, and are thereby liable to the ESOP pursuant to ERISA §§ 409 & 502(a)(2), 29 U.S.C. §§ 1109 & 1132(a)(2) and knowingly participated in or received benefit from other Defendants’ violations of ERISA pursuant to ERISA § 502(a)(3); 29 U.S.C. § 1132(a)(3).

Defendants submit that the relevant Defendants acted carefully and prudently in marketing Segerdahl and approving the sale of Segerdahl to ICV Partners on December 7, 2016. As to the Board Defendants, they were acting carefully and prudently in their corporate fiduciary capacity in this process. Defendants further submit that Plaintiff has failed to show damages from this sale.

Defendants further submit that this sale was not subject to ERISA's prohibited transaction rules since ICV Partners is not a party-in-interest under ERISA § 3(14). Plaintiff's ERISA § 406(b) claim and ERISA § 502(a)(3) "knowing participation" claim against Defendants Schneider and Joutras fail because (i) Plaintiff fails to show any diversion of plan assets, (ii) or that they caused the transaction, (iii) or that they knew GreatBanc's approval of the ICV sale was a fiduciary breach.

4. Witness Lists

Counsel for the Parties have agreed to discuss the order in which witnesses will be called.

A. Plaintiff's Witness List

a. Those Who Will Be Called by Plaintiff

1. **Daniel Galante.** Mr. Galante is Plaintiff's expert witness. He is Managing Director at the consulting firm Berkeley Research Group. He will testify regarding the process of marketing and selling a company, including strategic buyers in a sale process.
2. **Bruce Rush.** Mr. Rush is the Plaintiff and class representative in this matter.
3. **Andrew Stumpff.** Mr. Stumpff is Plaintiff's expert witness. He is an attorney and professor specializing in employee benefits law. He will testify regarding the terms of the Segerdahl ESOP Plan, certain tax rules, and Plan disqualification issues that arise if the Plan and tax rules are not followed.
4. **Daniel Van Vleet.** Mr. Van Vleet is Plaintiff's expert witness. He is Managing Principal at the business valuation consulting firm The Griffing Group. He will testify regarding the valuation of Segerdahl and damages.

b. Adverse Witnesses Who Will be Called by Plaintiff

5. **Marcus Bradshaw.** Mr. Bradshaw was Segerdahl's Chief Financial Officer from 2014 through the time of the December 7, 2016 transaction.

6. **Richard Joutras.** Mr. Joutras is a Defendant. He was CEO and President of Segerdahl until December 1, 2015, and Chairman of Segerdahl's Board of Directors from April 2015 until December 7, 2016. He also served as Administrator of the ESOP from 2014 until April 11, 2016.
7. **Mary Lee Schneider.** Ms. Schneider is a Defendant. She was CEO and President of Segerdahl from December 1, 2015 until December 1, 2018. She was also a member of Segerdahl's Board of Directors beginning on or about December 1, 2015, and served as Administrator of the ESOP beginning April 11, 2016.
8. **James Staruck.** Mr. Staruck is the CEO and Fed. R. Civ. P. 30(b)(6) representative of Defendant GreatBanc Trust Company. At all relevant times prior to December 7, 2016, GreatBanc served as the trustee of the ESOP.
9. **Andrew Ward.** Mr. Ward was an employee of Stout Risius Ross. He had primary involvement at Stout Risius Ross with the Segerdahl Fairness Opinion and Fairness Report and prior valuations of Segerdahl used by Defendants.

c. *Those Who May Be Called by Plaintiff*

10. **Robert Cronin.** Mr. Cronin is a Defendant. He was a member of Segerdahl's Board of Directors from April 2015 until December 7, 2016.
11. **Rodney Goldstein.** Mr. Goldstein is a Defendant. He was a member of Segerdahl's Board of Directors from April 2015 until December 7, 2016.
12. **Peter Mason.** Mr. Mason is a Defendant. He was a member of Segerdahl's Board of Directors from April 2015 until December 7, 2016.
13. **David Rubenstein.** Mr. Rubenstein is an attorney at Faegre Drinker Biddle & Reath LLP (previously Drinker Biddle & Reath). He was counsel to Defendant GreatBanc

regarding the Segerdahl transaction.

14. **Jeffrey Vergamini.** Mr. Vergamini was an investment banker with JPMorgan at the relevant time. He had primary involvement at JPMorgan with the marketing and sale of Segerdahl.

d. Those Whose Testimony Will be Presented by Deposition by Plaintiff

15. **Lloyd Metz.** Mr. Metz is an employee of ICV Partners. He had primary involvement at ICV regarding the purchase of Segerdahl.

Plaintiff reserves the right to call any witness on Defendants' witness list.

B. Defendants' Witness List

The Parties have agreed that each fact witness will be called only once if possible and that to facilitate the fact witnesses testifying only once, if Defendants take a direct exam of one of Defendants' witnesses first, Plaintiff would be able to cross examine Defendants' witnesses and that the scope of Plaintiff's cross will not be limited to the scope of direct.

a. Those Who Will Be Called by Defendants

1. **Jeffrey Vergamini.** Jeff Vergamini was the investment banker for JPMorgan, that was retained by Segerdahl to shop Segerdahl to potential buyers. Mr. Vergamini handled the marketing of Segerdahl to potential buyers, including advising Segerdahl's Board during this process and negotiating with potential buyers.
2. **Lloyd Metz.** Lloyd Metz is a Managing Director at ICV Partners, which bought Segerdahl on December 7, 2016. Mr. Metz was involved in ICV's due diligence on Segerdahl, including in reviewing Segerdahl's failures to meet projections, and ICV's revised offers for Segerdahl.
3. **Robert (Bob) Cronin.** Bob Cronin was an outside director that joined Segerdahl's

Board in April 2015. Mr. Cronin was a member of Segerdahl's Board that decided to shop Segerdahl to financial buyers in April 2016, and as a Board member he was involved in the marketing of Segerdahl to potential buyers and negotiating with potential buyers. Mr. Cronin was also a member of the Special Committee of Segerdahl's Board that reviewed any potential conflicts of management in selling Segerdahl.

4. **Peter Mason.** Peter Mason was an outside director that joined Segerdahl's Board in April 2015. Mr. Mason was a member of Segerdahl's Board that decided to shop Segerdahl to financial buyers in April 2016, and as a Board member he was involved in the marketing of Segerdahl to potential buyers and negotiating with potential buyers. Mr. Mason was also a member of the Special Committee of Segerdahl's Board that reviewed any potential conflicts of management in selling Segerdahl.
5. **Rodney (Rod) Goldstein.** Rod Goldstein was an outside director that joined Segerdahl's Board in April 2015. Mr. Goldstein was a member of Segerdahl's Board that decided to shop Segerdahl to financial buyers in April 2016, and as a Board member he was involved in the marketing of Segerdahl to potential buyers and negotiating with potential buyers. Mr. Goldstein was also a member of the Special Committee of Segerdahl's Board that reviewed any potential conflicts of management in selling Segerdahl.
6. **Mary Lee Schneider.** Mary Lee Schneider became CEO of Segerdahl in November 2015. Ms. Schneider was a member of Segerdahl's Board that decided to shop Segerdahl to financial buyers in April 2016, and as CEO she worked with Mr. Vergamini to shop Segerdahl to potential buyers. Ms. Schneider also was managing Segerdahl's sales and financial performance during this period.
7. **Marcus Bradshaw.** Marcus Bradshaw became CFO of Segerdahl in January 2014. As

CFO he worked with CEO Mary Lee Schneider and Mr. Vergamini in marketing Segerdahl to potential buyers.

8. **Rick Joutras.** Rick Joutras was CEO of Segerdahl until November 2015, when he became Chairman of Segerdahl's Board after Ms. Schneider was retained as CEO. Mr. Joutras was a large initial investor in the ESOP and was involved in managing Segerdahl's business since the ESOP's formation in 2003, including its successful but cyclical growth during this period. As a member of Segerdahl's Board, Mr. Joutras was also involved in working with Mr. Vergamini to sell Segerdahl.
9. **Mark Hahn (via remote).** Mark Hahn advises owners seeking to buy and sell companies in the printing industry, and also publishes monthly reports on deals in this industry. Mr. Hahn provided an expert rebuttal report to certain aspects of the reports of Plaintiff's tendered experts Daniel Galante and Daniel Van Vleet.
10. **Andy Ward.** Andy Ward is a Managing Director at Stout Risius Ross who was involved in valuing Segerdahl for the ESOP's trustee GreatBanc, including for the sale of Segerdahl to ICV Partners on December 7, 2016. Mr. Ward oversaw these valuations and the issuance of the fairness opinion by Stout related to this sales transaction.
11. **Lee Bloom.** Lee Bloom has an MBA and over 35 years of experience providing financial advisory services, including on ESOP valuations and fairness opinions. Mr. Bloom opined on the sales process used to sell Segerdahl in relation to Stout's fairness opinion and GreatBanc's decision to approve the sale, and to certain aspects of Stout's valuation and Plaintiff's critiques of it. Mr. Bloom also provided an expert rebuttal report to certain aspects of the reports of Plaintiff's tendered experts Daniel Van Vleet and Daniel Galante.

12. **James (Jim) Staruck.** Jim Staruck is President and CEO of GreatBanc who served as GreatBanc's relationship manager for the Segerdahl ESOP account from 2005 through 2016. On behalf of the Segerdahl ESOP, Mr. Staruck monitored Segerdahl's successful but cyclical business during this period. Mr. Staruck was also involved in GreatBanc's review and approval of the sale of Segerdahl to ICV Partners.

13. **David Rubenstein.** David Rubenstein was a Partner at then Drinker Biddle (now Faegre Drinker Biddle & Reath) who performed the legal work, including legal due diligence, for GreatBanc as trustee for the Segerdahl ESOP, in reviewing the potential sale of Segerdahl.

b. Those Who May Be Called by Defendants

14. **Greg Brown.** Greg Brown is a lawyer with extensive experience in advising on ESOP matters. Mr. Brown provided an expert rebuttal report to the report of Plaintiff's tendered expert Andrew Stumpff on whether certain ESOP notes had adequate security under the tax code, and the practical impacts of the positions Segerdahl took on this issue.

c. Those Whose Testimony May be Presented by Deposition by Defendants

Defendants currently expect that Lloyd Metz and Jeffrey Vergamini will testify at trial. But Defendants are including the deposition designations for them in the event they do not appear at trial.

Plaintiff is considering whether to object to Mr. Vergamini testifying by deposition designation in the event he does not appear at trial.

1. **Lloyd Metz.** Mr. Metz is an employee of ICV Partners. He had primary involvement at ICV regarding the purchase of Segerdahl. Mr. Metz is outside the subpoena powers of the Court.

2. **Jeffrey Vergamini.** Jeff Vergamini was the investment banker for JPMorgan, that was retained by Segerdahl to shop Segerdahl to potential buyers. Mr. Vergamini handled the marketing of Segerdahl to potential buyers, including advising Segerdahl's Board during this process and negotiating with potential buyers.

Defendants reserve the right to call any witness on Plaintiff's witness list.

5. Deposition Designations

The Parties are continuing to discuss deposition designations and counter-designations in an effort to resolve any issues and will file the completed designations upon completion of their discussion.

6. Exhibit Lists

The Parties have exchanged exhibit lists and are working to resolve discrepancies and create a joint exhibit list and will file a completed exhibit list upon completion of their discussion.

Dated: December 5, 2022

Respectfully Submitted,

By: /s/ Michael M. Mulder
Michael M. Mulder
Elena N. Liveris
LAW OFFICES OF
MICHAEL M. MULDER
1603 Orrington Avenue, Suite 600
Evanston, Illinois 60201
Telephone: 312-263-0272
mmmulder@mmulderlaw.com
eliveris@mmulderlaw.com

Todd Schneider (*pro hac vice*)
James A. Bloom (*pro hac vice*)
SCHNEIDER WALLACE
COTTRELL KONECKY LLP

2000 Powell Street, Ste. 1400
Emeryville, California 94608
Telephone: (415) 421-7100
tschneider@schneiderwallace.com
jbloom@schneiderwallace.com
Counsel for Plaintiff and the Class

By: /s/ Katelyn W. Harrell (with consent)
Charles F. Seemann III
Robert W. Rachal
Katelyn W. Harrell
JACKSON LEWIS, P.C.
601 Poydras St., Suite 1400
New Orleans, LA 70130
Tel: 504.208.1755
Fax: 504.208.1759
CharlesSeemann@jacksonlewis.com
Robert.Rachal@jacksonlewis.com
Katelyn.Harrell@jacksonlewis.com
Counsel for Defendants

Sarah J. Gasperini
JACKSON LEWIS P.C.
150 N. Michigan Ave., Suite 2500
Chicago, IL 60601
Tel: 312.803-2507
Fax: 312.787.4995
Sarah.Gasperini@jacksonlewis.com
Local Counsel for Defendants

By: /s/ Kevin Simpson (with consent)
William O'Neil
Kevin Simpson
Winston & Strawn, LLP
35 W. Wacker Dr.
Chicago, IL 60601
Tel: 312-558-5308
kpsimpson@winston.com
woneil@winston.com
*Counsel for Defendants Cronin,
Goldstein, and Mason*